

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3947 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI MOTIBHAI PATEL

Versus

CHAROTAR GRAMODYAOG SAHAKARI MANDALI LTD.

Appearance:

MR NILESH A PANDYA for Petitioner
M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/07/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner challenges the judgement and award dated 23.12.1988 of the Labour Court, Nadiad, in Reference LCN No. 624 of 1983 in so far as the Labour Court did not award full backwages to the petitioner.

2. The petitioner was dismissed from service on 31.12.1977 on the ground that the petitioner had abused and misbehaved with the Chairman of the respondent on 30.11.1977. The Labour Court believed the case of the management that the petitioner had misbehaved and abused the Chairman of the respondent but taking into consideration that the petitioner had not physically assaulted the Chairman and that the petitioner's past service record was not bad, the Labour Court found that the penalty of dismissal from service was grossly disproportionate to the misconduct proved. However, no order for reinstatement could be passed as during pendency of the Reference the petitioner had attained the age of superannuation i.e. age of 60 years on 12.12.1986. As regards backwages the Labour Court awarded 50% of the backwages. It is against the aforesaid award not granting full backwages, this petition has been preferred.

3. In view of the finding given by the Labour Court that the petitioner did abuse and misbehave with the Chairman of the respondent Company. The impugned award of the Labour Court denying 50% of the backwages does not call for interference under Article 226 of the Constitution. In this connection, reference is required to be made to the decision of a Division Bench of this Court in the case of CHHOTALAL VITHALDAS KOTTECHA VS. HALAR SALT CHEM. WORKS reported in 1985 GLH 175 wherein facts were similar. In the said case also, the Division bench held that the punishment of dismissal from service was grossly disproportionate to the charge proved against the workman and that the ends of justice and the purpose of punishment would be served by refusing to him half the backwages from the date of dismissal till the date of reinstatement.

In the instant case the Labour Court has passed the award on the similar lines except for the fact that the petitioner had already attained the age of superannuation and therefore no order of reinstatement was required to be passed.

4. Even while holding that the Labour Court did not err in awarding only 50% the backwages, while setting aside the order of dismissal, this Court would like to clarify that since the only reason for denying the reinstatement to the petitioner was the fact that he had attained the age of superannuation during pendency of the reference, the petitioner is entitled to receive all the terminal benefits at the time of his retirement as if the

impugned order of dismissal was not passed. All the consequential benefits (other than 50% backwages denied to the petitioner) if not paid so far shall be paid to the petitioner within two months from today.

5. Subject to the aforesaid clarification and direction, the petition is dismissed.

(M.S. SHAH, J)

(pkn)